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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,201	09/29/2003	Anthony Robert Knoerzer	CFLAY.00145	2669
22858	7590	02/25/2004	EXAMINER	
CARSTENS YEE & CAHOON, LLP			NOLAN, SANDRA M	
P O BOX 802334			ART UNIT	
DALLAS, TX 75380			PAPER NUMBER	

1772

DATE MAILED: 02/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

AS

**Office Action Summary**

Application No.

10/674,201

Applicant(s)

KNOERZER ET AL.

Examiner

Sandra M. Nolan

Art Unit

1772

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --****Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Claims*

1. Claims 1-9 are pending.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-8 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

What does "thin" (claims 1 and 5, line 2 of each) mean? Are there certain operable thicknesses for the invention? Please clarify the claims.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buongiorno et al (US 6,106,934) in view of Ito et al (US 4,291,085).

Buongiorno teaches heat shrinkable multilayer films (abstract) for packaging foods (col. 1, line 10) that contain two skin layers (col. 7, lines 21-23) and a core layer containing polypropylene (PP) (col. 7, lines 64-67).

It fails to teach  $\leq 2.5\%$  polyethylene (PE) or  $\leq 1\%$  polybutene (PB) in the PP layer.

Ito teaches food packaging (title) containing a sealable (abstract) PP layer that comprises blends of PP with PP or other polyolefins (col. 5, lines 41-59). The films are useful for food to be sterilized (abstract).

The patents are analogous because they both deal with food packaging.

It would have been obvious to one having ordinary skill in the art at the time that the invention was made to employ the PP-containing blends of Ito as the core layer in the films of Buongiorno, in order to render the Buongiorno films sterilizable.

The motivation to employ the PP-containing blends of Ito as the core layer in the films of Buongiorno is found in the Ito abstract, where the sterilizability of its films is taught.

It is deemed desirable to make food packaging sterilizable in order to facilitate the packaging and handling of various foods while address health problems.

In the absence of convincing objective evidence to the contrary, the selection of types of "other polyolefins" (i.e., PB resins) and useful amounts of PE and/or PB resins are deemed obvious optimization. In re Peterson, 65 USPQ2d 1379 (FedCir 2003).

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7. Claims 1-2, 4-6 and 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buongiorno in view of JP 11292992A (abstract).

Buongiorno is discussed above. It fails to teach the use of  $\leq 2.5\%$  PE blended with PP.

JP 11292992A (JP 992) teaches sealant layers for food packaging films (title) that contain PP and PE blends (novelty section). The sealant layers give films with excellent heat resistance (title, advantage section).

The references are analogous because they both deal with food packaging films.

It would have been obvious to one having ordinary skill in the art at the time that the invention was made to employ the blends of JP 992 in the films of Buongiorno in order to make them more heat resistant.

The motivation to employ the blends of JP 992 in the films of Buongiorno is found in the title and advantage sections of JP 992.

It is deemed desirable to make food packaging that has heat resistance so that the packaging may be sterilized and/or useful for cook-in containers.

In the absence of convincing objective evidence to the contrary, the selection of useful amounts of PE is deemed obvious optimization. In re Peterson, 65 USPQ2d 1379 (FedCir 2003).

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**Conclusion**

Any inquiry concerning this communication should be directed to the Examiner, Sandra M. Nolan, whose telephone number is 571/252-1495. The Examiner can normally be reached on Monday through Thursday, from 6:30 am to 4:00 pm, Eastern Time.

If attempts to reach the Examiner by telephone are unsuccessful, her supervisor, Harold Pyon, can be reached at 571/252-1498. The general fax number for the art unit is 703/872-9306.



S. M. Nolan  
Patent Examiner  
Technology Center 1700

SMN/smn  
10674201(20040217)